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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

MARLA CASTLEMAN,	)	
	)	
	)	
Plaintiff,	)	<b>Case No.: 2:10-CV-00280-JLQ</b>
	)	
	)	
vs.	)	PLAINTIFF'S OPPOSITION TO
	)	PROFESSIONAL RECOVERY
PROFESSIONAL RECOVERY	)	SYSTEMS, INC.'s MOTION FOR
	)	SUMMARY JUDGMENT
SYSTEMS, INC.,	)	
	)	
	)	
Defendants.	)	
	)	

Plaintiff, Marla Castleman, by and through her counsel, hereby submits its opposition to Defendant's motion for summary judgment.

**STATEMENT OF THE CASE**

Plaintiff, Marla Castleman, (hereinafter Plaintiff), filed a suit in this court against Defendants, Professional Recovery Systems, Inc. (hereinafter "PRS") alleging that Defendant violated the FDCPA by attempting to collect a debt that had been previously settled. PRS, in its Motion for Summary Judgment admits that it did, in fact, attempt to collect a debt that had been previously settled.

1 After initial disclosures, and conducting no discovery PRS has brought this  
2 Summary Judgment Motion. The motion must be denied, as the evidence shows  
3 that there exists a dispute of material fact.

#### 4 **I. UNDISPUTED FACTS**

5 1. PRS was assigned a Sears account of Plaintiff's that had already been  
6 settled.

7 2. Despite the fact that the account had been previously settled, PRS  
8 demanded payment of the account on May 21, 2009. (PRS's MSJ pg 2)

9 3. Plaintiff notified PRS on June 6, 09 that the account had been settled  
10 through her attorneys, The Palmer Firm. (PRS's MSJ pg 2)

11 4. Despite nearly three months time to investigate Plaintiff's assertion that  
12 she had settled the account through her attorneys, PRS contacted Plaintiff, through  
13 her attorney for the purpose of collection of the settled debt. (PRS MSJ pg2).

14 5. PRS faxed to Plaintiff's attorney, a demand letter on August 24, 2009,  
15 she owed on a settled debt. (Complaint Ex. C)

#### 16 **POINTS & AUTHORITIES**

##### 17 **A. THERE EXISTS A TRIABLE ISSUE OF MATERIAL FACT AS** 18 **DEFENDANT DISPUTES THE EXISTENCE OF ANY AGREEMENT** 19 **WITH CAPITAL ONE**

20 The moving party bears the initial burden of establishing its right to  
21 judgment as a matter of law. All reasonable inferences from the evidence must be  
22 construed in favor of the nonmoving party. *Olsen v. Idaho State Bd. of Med.*, 363  
23 F.3d 916, 922 (9th Cir. 2004).  
24

25  
26 The FDCPA is a strict liability statute that " makes debt collectors liable for  
27 violations that are not knowing or intentional." *Reichert v. Nat'l Credit Sys., Inc.*,  
28 531 F.3d 1002, 1005 (9th Cir.2008).

1 PRS believes it should be excused from liability under the FDCPA because  
2 it “did not know” that Plaintiff was represented by an attorney and that the case  
3 had been settled. However, the FDCPA is clear that not knowing or unintentional  
4 violations of the statute is no basis for an excuse of its violation.  
5

6 PRS alleges that because the only communication made during the  
7 applicable statute of limitations was to Plaintiff’s attorney. There is nothing in the  
8 text of the FDCPA to indicate that attorneys representing debtors are excluded  
9 from the class of third parties to whom a debt collector may not make a false,  
10 deceptive, or misleading representation. To the contrary, § 1692c(a) specifically  
11 provides that, where a debtor is represented by an attorney, the debt collector shall  
12 direct all "communication" to the attorney, absent permission to communicate  
13 directly with the debtor. A proper reading of the text therefore dictates that §  
14 1692e, which regulates categorically the contents of communications by the debt  
15 collector, covers the "communication" to the debtor's attorney described in §  
16 1692c(a)(2). *See Guerrero v. RLM Acquisitions LLC*, 449 F3d 926 (9<sup>th</sup> Cir. 2007)  
17 *citing. Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 115 S.Ct. 1061, 131 L.Ed.2d 1  
18 (1995) ("[T]he normal rule of statutory construction [is] that identical words used  
19 in different parts of the same act are intended to have the same meaning.") (internal  
20 quotation marks and citation omitted).  
21

22 In *Guerrero*, the court recognized a limited exception to this rule in that  
23 communications **targeted only to a debtor's attorney** are not actionable under the  
24 FDCPA. 499 F.3d at 935-36. The court concluded that a letter targeted directly “to  
25 counsel, and not to his client—'the consumer'— was not a prohibited collection  
26 effort.” *Id.* at 934. In this case, however, *Guerrero* is inapplicable. The offensive  
27 letter in Exhibit C to Plaintiff’s complaint, sent to Plaintiff’s attorney **was**  
28

1 **addressed to and targeted at** Plaintiff, regardless of whether it was sent to  
2 Plaintiff or not.

3  
4 PRS's FDCPA violation was not unintentional or a result of a bona fide  
5 error, they nearly three months to investigate Plaintiff's assertion that the debt was  
6 settled in full by her attorneys, yet elected to send a letter, targeted at Plaintiff to  
7 her counsel as a direct attempt to collect a settled debt. Such communications are  
8 in direct violation of 15 USC § c(a)(2), 15 USC § e in which PRS should be held  
9 strictly liable.

10 The analysis of this court will be focused on whether PRS's investigation  
11 and validation of the debt, and its intent when targeting Plaintiff in its demand of  
12 5/21/09 and intent to target Plaintiff in its letter to her of August 24, 2009. These  
13 are material issues of fact for a jury to decide. Accordingly, plaintiffs' motion for  
14 summary judgment must be denied as there exist triable issues of material fact.

15  
16 DATED: February 24, 2011.

17 JOHNSTON PORTER LAW OFFICE P.C.

18  
19 By: s/Lisa R. J. Porter  
20 LISA R. J. PORTER, WSBA 31118  
21 Attorney for Plaintiff  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** on the following named persons on the date indicated below by:

x

mailing with postage prepaid

CM/ECF System


hand delivery

overnight delivery

to said persons at their last known address(es) indicated below:

Jeffrey I Hasson  
Davenport & Hasson LLP  
12707 NE Halsey St  
Portland, OR 97230  
hasson@dhlaw.biz

Dated this 24<sup>th</sup> Day of February, 2011.

JOHNSTON PORTER LAW OFFICE P.C.

By: s/Lisa R. J> Porter

LISA R. J. PORTER, WSBA 31118  
Attorney for Plaintiff